IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.1607 of 2006
To
FIRST APPEAL No.1615 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

==========

SPL. LAQ OFFICER & ANR. - Appellants
Versus
SHREYABEN JAYANTIBHAI & ORS. - Respondents

==========

Appearance :
MR SS PATEL, AGP for Appellants.
MR AJ PATEL for Original Claimants.
NOTICE SERVED BY DS for Respondent No.2.

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 14/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. These appeals filed under Section 54 of the Land Acquisition

Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908 are directed against judgment and award dated January 31, 2005 rendered by the learned 2nd Joint Civil Judge (Senior Division), Vadodara, in Land Reference Case No.523 of 1996 to Land Reference Case No.531 of 1996 by which the Reference Court has awarded additional compensation to the claimants at the rate of Rs.231/- per square metre, over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.9/- per square metre for the acquired lands.

2. A proposal was received by the Government to acquire agricultural lands of Village: Bhayali, Taluka: Vadodara, District: Vadodara, for the public purpose of Narmada Canal Project. On consideration of the said proposal, the State Government was satisfied that the agricultural lands of Village: Bhayali were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on June 3, 1993. The owners, who were served with the notices under Section 4 of the Act, objected to the proposed acquisition. After considering their objections, a report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said report, the State Government was satisfied that the

agricultural lands of Village: Bhayali specified in the notification, which was published under Section 4 of the Act, were needed for the public purpose of Narmada Canal Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on January 27, 1994. The interested persons were thereafter served with the notices for determination of the compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.70/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated June 19, 1995, offered compensation to the claimants at the rate of Rs.9/- per square metre. The claimants were of the opinion that offer of the compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications in writing requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Vadodara, which were registered as Land Reference Case No.523 of 1996 to Land Reference Case No.531 of 1996. It may be mentioned that before the Reference Court, the claimants claimed compensation at the rate of Rs.400/- per square metre.

3. On behalf of the claimants, witness Arvindbhai Dahyabhai Patel, who was power of attorney holder of claimant Nikunjbhai Jayantibhai Patel, filed affidavit dated December 29, 2004 as required by Order XVIII, Rule 4 of the Code of Civil Procedure. In the affidavit, it was mentioned that the lands acquired were covered under the development plans prepared by Vadodara Urban Development Authority and that they were highly fertile. It was further stated in the said affidavit that Revenue Survey Nos.197, 199, 200 and 201 of Village: Bhayali situated at a distance of 100 metres from the acquired lands belonged to one Ms.Diwaliben, who was wife of Chhaganbhai Shamalbhai. It was further mentioned in the affidavit that an application was made to the Government for converting those revenue survey numbers from new tenure to old tenure under the provisions of the Bombay Land Revenue Code and that the value of the lands as on 1993, was assessed at the rate of Rs.300/- per square metre. In support of this averment made in the affidavit, the order passed by the competent authority was produced at Exhibit 36 on the record of the case. It was further mentioned in the affidavit that boundaries of Village: Bhayali and Village: Vasna were adjoining to each other and that Revenue Survey Nos.334/1, 334/2 and 336 of Final Plot No.223 of Town Planning Scheme No.15 of Village: Vasna, which were situated at a distance of 1.5 Kilometres, were sold by a deed dated July 3, 1993 at the rate of Rs.520/- per square

metre. In support of this averment, the sale deed was produced on record of the case at Exhibit 37. It was also mentioned in the affidavit that the lands acquired were situated in a developed area and, therefore, the claimants were entitled to enhanced compensation.

This witness was cross-examined on behalf of the acquiring authorities, but nothing substantial could be elicited. In cross-examination, it was stated by the witness that he was not present when the notice under Section 9(3) of the Act was served on the claimants. The suggestion made by the learned counsel for the acquiring authorities that the sale deed produced by him related to the lands, which were situated at a distance, was emphatically denied by him. It was admitted by the witness that no documentary evidence was produced by him to substantiate his claim that each claimant was earning income of Rs.3 Lakhs to Rs.4 Lakhs per hectare per year from sale of agricultural produces.

4. On behalf of the claimants, another witness namely Pareshbhai Laxminarayan Sharma was examined at Exhibit 41. In his examination-in-chief, the witness stated that he was Assistant Town Planner and that his office had occasion to assess the market value of Revenue Survey Nos.197, 199, 200 and 202 of Village: Bhayali pursuant to the applications made

by the owners for converting those lands from new tenure to old tenure and that the lands were assessed as on June 24, 1994 at Rs.265/- per square metre. It was further stated by the witness that thereafter the proceedings were remitted to him after which the lands were assessed as on April 17, 1997 at the rate of Rs.300/- per square metre.

Though this witness was also cross-examined by the learned counsel for the acquiring authorities, nothing substantial could be brought on record to dispute the claim made by the claimants for enhanced compensation.

5. On appreciation of the evidence adduced by the parties, the Reference Court came to the conclusion that Exhibits 36 and 37 provided guidance for the purpose of fixing market value of the lands acquired in this case. As far as Exhibit 36 is concerned, the learned Judge noticed that the price of the lands situated near the acquired lands was Rs.265/- per square meter as on June 24, 1994. The learned Judge noticed that assessment of the said price was after publication of notification under Section 4(1) of the Act on June 3, 1993 for acquiring the lands in the instant case and, therefore, after appropriate deduction, the claimants would be entitled to compensation at the rate of Rs.240/- per square metre. While considering the Exhibit 37, the learned Judge noticed that in

view of the distance of 1.5 Kilometres between the lands, which were subject matter of sale deed Exhibit 37 and the lands acquired in the instant case, 1/3 amount should be deducted. After making the deduction, the learned Judge held that the amount which required to be considered while computing the compensation payable to the claimants, was Rs.375/- per square metre. The learned Judge further noticed that subject matter of Exhibit 37 were non-agricultural lands whereas in the instant case, agricultural lands were acquired and, therefore, further 1/3 deduction was required to be made. Thus, after deducting 1/3 amount from Rs.375/-, the learned Judge held that on the basis of Exhibit 37, the claimants were entitled to compensation at the rate of Rs.250/- per square metre. However, in the ultimate analysis, the learned Judge has awarded compensation at the rate of Rs.240/- per square metre by the impguned award, giving rise to the above numbered appeals.

6. This Court has heard Mr.S.S.Patel, learned Assistant Government Pleader for the appellants, and Mr.A.J.Patel, learned counsel for the respondents, at length and in great detail. This Court has also considered the documentary evidence produced by the parties on record of the case.

7. This Court has considered the award rendered by the Land

Acquisition Officer. A bare glance at the award makes it clear that the Special Land Acquisition Officer had called for information from the office of the Sub-Registrar, Baroda, in respect of the sale transactions, which had taken place during the five years prior to year 1993. The award nowhere mentions that, in fact, sale deeds were produced before the Land Acquisition Officer for his perusal nor it was the case of the Special Land Acquistion Officer before the Reference Court that he had, in fact, perused the sale deeds regarding which information was supplied to him by the Sub-Registrar, Baroda. Further, sale deeds referred to at Serial Nos.1, 2, 3, 6 to 17, 19 to 29 and 36 to 38 were in respect of the lands, which were situated far away from the lands under acquisition in this case. This is quite evident from the contents of the award rendered by the Special Land Acquisition Officer. The Special Land Acquistion Officer committed an error in holding that the documents at Serial Nos.4, 5, 18, 24, 25 and 35 were comparable inasmuch as those documents were never produced before him for perusal and without looking to the contents of those documents, it was not prudent for him to hold that those documents furnished good guidance for the purpose of determining the market value of the lands acquired in this case. Under the circumstances, the Reference Court was justified in coming to the conclusion that the claimants were not offered adequate compensation by the Special Land

Acquisition Officer.

8. From the evidence adduced by the claimants, it is evident that the claim for enhanced compensation was based on Exhibits 36 & 37. Exhibit 36 is order passed by the Collector, Vadodara on April 3, 1998 permitting conversion of certain revenue survey numbers from new tenure to old tenure whereas Exhibit 37 is sale deed dated July 3, 1993, by which Revenue Survey Nos.334/1, 334/2 and 336 of Village: Vasna were sold at the rate of Rs.560/- per square metre. From the impugned award, it is evident that the learned Judge has recorded a finding of fact that the lands, which were subject matter of Order Exhibit 36, were assessed at the rate of Rs.265/- per square metre as on June 24, 1994. In Exh.36, it is not stated that the lands were assessed at the rate of Rs.265/- per square metre as on Jun 24, 1994, but it is so stated by Mr.Sharma in his substantive evidence before the Court. The final order dated April 3, 1998 indicates that in the year 1997, the lands were assessed at the rate of Rs.330/- per square metre. Here in this case, notification under Section 4 of the Act was published on June 3, 1993 and, therefore, if appropriate deduction is made from the price indicated in Exhibit 36, the value of the lands acquired can be assessed at the rate of Rs.198/- per square metre. As far as Exhibit 37 is concerned, this Court finds that certain survey numbers of Village: Vasna

were sold vide sale deed dated July 3, 1993 at the rate of Rs.560/- per square metre. It may be mentioned that apart from the fact that the lands, which were subject matter of Exhibit 37, were situated at a distance of 1.8 Kilometre away from the acquired lands, which is evident from the map produced on the record of the case, they were non-agricultural land and were smaller in size compared to the size of the lands acquired in the instant case. Thus, after making appropriate deduction, this Court is of the opinion that the price of the lands acquired on the basis of Exhibit 37 would be Rs.200=00 per square metre and not Rs.250/- per square metre as is held by the Reference Court.

9. The contention raised by Mr.S.S.Patel, learned Assistant Government Pleader for the appellants, that post-notification sale of lands of Village Vasana should not be taken into consideration by the Court while assessing the market value of the lands acquired in the instant case, cannot be accepted. Here in this case, notification under Section 4(1) of the Act was published on June 3, 1993 whereas certain survey numbers of Village: Vasana were sold at the rate of Rs.560/- per square metre by sale deed dated July 3, 1993. Thus, there is a difference of only one month between the publication of notification under Section 4(1) of the Act and the sale deed in question. It is true that the sale instance sought to be relied

upon by the claimants is post-notification sale. However, in **State of U.P. vs. Major Jitendra Kumar & Others, A.I.R. 1982 SC 876**, the Supreme Court has held that post-notification sale deed can be taken into consideration for the purpose of assessing the market value of the lands. In that case, notification under Section 4 of the Act was issued on January 6, 1948 and the High Court had taken into consideration the sale deed dated July 11, 1951, that is to say, which was executed three years after notification. The decision of the High Court was approved by the Supreme Court and the appeal filed by the State was dismissed. Again in **Mehta Ravindrarai & Ors. vs. State of Gujarat, A.I.R. 1989 SC 2051**, it is held that for the purpose of determining the market value, sale of adjacent lands can be taken into consideration. What is laid down by the Supreme Court as principle of law is that agreement of sale executed after five months of Section 4 Notification can be taken into consideration if no sharp or speculative rise in the price after acquisition has taken place. In the instant case, no evidence has been adduced by the acquiring authority that after publication of notification under Section 4(1) of the Act, there was sharp and speculative rise in price of the lands of Village: Bhayali or Village: Vasana. Under the circumstances, post-notification sale deed can be taken into consideration for the purpose of assessing the market value of the lands acquired

from Village: Bhayali. In **Panna Lal Ghosh vs. Land Acquisition Collector & Ors., 2004 A.I.R. SCW 66,** the Supreme Court has held in paragraph 5 of the reported decision as under:

> *"Compensation payable on a piece of land acquired under the Act is determined by taking into account the market value of the land so acquired. The most reliable way to determine the market value is to rely on the instances of sale of portions of the same land as has been acquired or adjacent lands made shortly before or the after the Section 4 notification."*

10. In view of above referred to principles laid down by the Supreme Court, there is no manner of doubt that post-notification sale can be taken into consideration for the purpose of determining the market value of the lands acquired. Here in this case, the claimants have asserted that the lands of Village: Vasana, which were subject matter of the sale deed dated July 3, 1993, were similar in all respects to the lands acquired in the instant case from Village: Bhayali. Therefore, the sale instance cannot be ignored by the Court while assessing the market value of the lands acquired in the instant case. Mr.A.J.Patel, learned counsel for the claimants, has fairly conceded that having regard to the nature of evidence adduced by the claimants, the claimants would be entitled to compensation at the rate of Rs.200/- per square metre and to that extent, the appeals should be allowed.

11. For the foregoing reasons, the appeals are partly allowed. The common judgment and award dated January 31, 2005 rendered by the learned 2nd Joint Civil Judge (S.D.), Vadodara, in Land Reference Case No.523 of 1996 to Land Reference Case No.531 of 1996 is modified and it is held that the claimants would be entitled to compensation at the rate of Rs.200/- per square metre for their acquired lands and not at the rate of Rs.240/- per square metre as held by the Reference Court. The claimants, whose lands are fragmented, would be entitled to get 1/6th of the additional compensation (i.e. Rs.191/- per square metre) for the remaining uncultivated or sub-cultivated lands as injurious affection. The other benefits, which are conferred on the claimants by the impugned award, are not interfered with at all and are hereby confirmed. The appeals are allowed only to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra